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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/166,625	10/05/1998	DAVID C. MAY	1020-0501	9351

23643 7590 11/04/2003

BARNES & THORNBURG  
11 SOUTH MERIDIAN  
INDIANAPOLIS, IN 46204

EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 11/04/2003

41

Please find below and/or attached an Office communication concerning this application or proceeding.

26641

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/166,625	MAY, DAVID C.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on April 21, 2003 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/166,625 is acceptable and a CPA has been established. An action on the CPA follows.

### **Request for suspension ??**

### **Note interview summary**

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 3-10, and 12-17 stand rejected under 35 USC 103(a) as being unpatentable over US 5,266,390 issued to Garland alone or in view US 5,368,912 issued to Reaves, as set forth in section 4 of the last Office Action.

### ***Response to Arguments***

4. Applicant's arguments presented at the interview of July 15, 2003, have been fully considered but have not been found persuasive.

5. Applicant asserted that the cited prior art does not teach four main points of the present invention. First, applicant argued that the prior art does not the presently claimed "nonwoven" according to the definition in the specification, which applicant asserts to include, by definition, some natural fibers. As such, applicant asserts that claim 10 which reads "nonwoven fabric

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material including rayon fibers" inherently also includes some natural fibers. The examiner respectfully disagrees. The specification at the paragraph spanning pages 7-8, states the following:

What is meant herein by the use of the term "non-woven fabric" means any assembly of synthetic fibers randomly interlocked and/or held together to form a web or mat, or any assembly of natural fibers randomly interlocked and/or held together to form a web or mat. In addition, the term "non-woven fabric" includes an assembly having a mixture of fibers chosen from the group of mixtures consisting of (1) synthetic fibers and natural fibers, (2) synthetic fibers and paper fibers, and (3) natural fibers and paper fibers, randomly interlocked and/or held together in a web or mat.

Thus, nonwoven is any assembly of all synthetic fibers *or* all natural fibers *or* a mixture of (a) synthetic and natural fibers, (b) synthetic and paper fibers, or (c) natural and paper fibers. In other words, the specification *does not* limit the term nonwoven fabric to inherently include some natural fibers. As such, applicant's argument is found unpersuasive.

6. Applicant's second argument is that the prior art does not teach the claimed natural fibers. The examiner agrees that the primary reference of Garland fails to teach natural fibers. However, the rejection is not a 102 anticipation rejection, but rather a 103 obviousness rejection. As stated in prior office actions, it would have been obvious to substitute the polypropylene fibers of the absorbent polypropylene nonwoven fabric with an inherently absorbent fiber such as cotton or rayon. Thus, applicant's argument is found unpersuasive.

7. The third point applicant argues is that the thickness of the present invention is not taught or suggested by the prior art. The examiner respectfully disagrees. As noted in the last Office Action, it would have been obvious to one skilled in the art to modify the thickness of the Garland invention in order to increase the dropcloth strength, durability, and absorbency, while still maintaining drape and flexibility. Additionally, as discussed in the interview, the examiner

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believes the thickness taught by Garland to be in error. Specifically, Garland teaches the total thickness of the dropcloth, which includes at least a layer of a polypropylene nonwoven and a film, to be 0.0015-0.004 mils. The examiner contends that even if the entire thickness of the dropcloth is due to the thickness of a single polypropylene fiber—which it is not—it is not possible to produce a polypropylene fiber having a denier that would produce such a thin layer, much less as thin as the total dropcloth is taught to be. The examiner can and will produce evidence based upon calculations to such an end upon the request of applicant. Thus, the examiner believes the Garland teachings of thickness to be in error. Either way, it is asserted that the claimed thickness would have been obvious to one of ordinary skill in the art.

8. With respect to the fourth point, applicant argues the prior art adheres layers of like plastics (i.e., thermoplastic fibers to a thermoplastic film), while the present invention adheres a plastic film to natural fibers. This argument is unpersuasive in that it is well known in the art to adhere or fuse thermoplastic films to a wide variety of substrates, including natural fibers. The fusion of Garland occurs by melting said film so that it flows and, at least partially, encapsulates the synthetic thermoplastic fibers. Depending upon the materials employed and the fusion temperature, there may or may not be additional bonding by way of melting said thermoplastic fibers. However, the primary means of attachment or bonding is due to the flow of the film and its encapsulation of said fibers. Such means of bonding will also inherently be present in fusion of a thermoplastic film to a natural fiber nonwoven. Thus, applicant's argument is found unpersuasive.

9. In the interview, applicant also argued the advantages of the present invention over the prior art. Specifically, applicant asserts the present dropcloth has better fluid absorption,

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disperses fluid in the absorbent layer thereby minimizing tracking of said fluid, and dries faster. Additionally, applicant asserts the dropcloth has good drapeability, tear resistance and stretchability. In response, it is argued that there is no evidence (e.g., comparative results) on record showing said improved properties in comparison to the closest prior art (i.e., Garland). Additionally, there is no evidence of unexpected results or evidence of commercial success due to the improved properties. Therefore, applicant's arguments are found unpersuasive and the above rejection is maintained.

### *Conclusion*

10. This is a CPA of applicant's earlier Application No. 09,166,625. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA  
PRIMARY EXAMINER